No. 93-464

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1993

G-K DEVELOPMENT COMPANY, INC.,

Petitioner,

vs .

BROADMOOR PLACE INVESTMENTS, L.P., et al.,

Respondents.

SUPPLEMENT TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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On July 15, 1993, District Judge Earl E. O'Connor entered an Order in the above proceedings which was not received by counsel for Petitioner. Counsel for Petitioner first learned of the existence of the Order while conducting research on October 7, 1993.

SUPPLEMENT TO OPINIONS BELOW

The decision of the U.S. District Court dismissing the challenge to the disbursement Order dated July 15, 1993, is reported at 157 B.R. 34 and is set forth in Appendix A attached hereto.

Respectfully submitted,

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Counsel for Petitioner

***Counsel of Record**

Appendix A ("Filed"-stamped JUL 15 1993)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

IN RE:	)	
	)	Bankruptcy
BROADMOOR PLACE INVESTMENTS, L.P., Debtor.	)	No. 89-21736-11
	)	
	)	
G-K DEVELOPMENT COMPANY, INC., Appellant,	)	
	)	CIVIL ACTION
v.	)	
	)	No. 93-2059-O
	)	
BROADMOOR PLACE INVESTMENTS, L.P., et al.,	)	
	)	ENTERED ON
	)	THE DOCKET
Appellees.	)	DATE: 7/15/93
	)	

MEMORANDUM AND ORDER

This matter is before the court on the motion of appellee Resolution Trust Corporation ("RTC") to dismiss this appeal of an Order Authorizing Disbursement of Sale Proceeds and Modifying Automatic Stay entered by the United States Bankruptcy Court for the District of Kansas on January 29, 1993 (Case No. 89-21736-11) (Doc. #2). For the reasons set forth below, appellee's motion

will be granted.

This dispute arises from the sale of property known as Broadmoor Place. The debtor, Broadmoor Place Investments, L.P., filed a Chapter 11 petition on October 31, 1989. At that time, the debtor owed appellee RTC, as receiver of Blue Valley Federal Savings and Loan Association, $8,005,256.76, plus accruing interest, attorney's fees, collection costs, and other charges.

The debt was secured by a first and prior perfected security interest in the Broadmoor Place office building.

In June 1990, both appellant G-K Development Company, Inc. ("G-K") and appellee Forrest L. Robinson submitted bids to purchase the Broadmoor Place property. After a September 10, 1990, hearing, the bankruptcy court issued orders on September 14, 1990, and November 1, 1990, approving the sale of the property to Robinson. G-K appealed the orders authorizing the sale and both the district court and the Tenth Circuit affirmed the bankruptcy court.

In the interim,[1] the bankruptcy court entered the order at issue here authorizing the disbursement of the sale proceeds. G-K now

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1 The bankruptcy proceedings were not stayed during the pendency of the appeals.

challenges that order authorizing disbursement. Appellee seeks dismissal of this appeal on the grounds that G-K does not have standing to challenge the order authorizing the disbursement of the sale proceeds because G-K was not an "aggrieved person." G-K filed its only objection to RTC's motion to dismiss on June 15, 1993, stating that the court should not decide this motion to dismiss until the Tenth Circuit ruled on G-K's pending motion for rehearing. G-K's motion for rehearing has since been denied and the mandate issued June 25, 1993.

We hold that G-K lacks standing to appeal the bankruptcy court's order authorizing disbursement of the sale proceeds. G-K was merely an unsuccessful bidder for the Broadmoor property and not an "aggrieved person" as is required for standing to challenge the bankruptcy court's decision. G-K Development Co. v. Broadmoor Place Inv. et. al., Nos. 92-3043, 92-3048, 1993 WL 176520, at *2n.2 (10th Cir. May 21, 1993); Holmes v. Silver Wings Aviation, Inc., 881 F.2d 939, 940 (10th Cir. 1989); In re HST Gathering Co., 125 B.R. 466, 468 (Bankr. W.D. Tex. 1991). Moreover, given the Tenth Circuit's ruling affirming the bankruptcy court's order authorizing the sale, we see no merit in G-K's challenge to the disbursement of the proceeds from that sale. The Tenth Circuit noted that without a stay pending appeal, a reversal

or modification on appeal of an authorization "of a sale or lease of property does not affect the validity of a sale" to a good faith purchaser. G-K Development Co., 1993 WL 176520, at *2n.3 (citing 11 U.S.C. § 363(m)). If G-K had no basis for challenging the validity of the sale, we find no basis for G-K's present challenge to the disbursement of the proceeds from that sale. Accordingly, we would affirm the bankruptcy court's order approving the disbursement of the proceeds from the sale on the merits.

IT IS THEREFORE ORDERED that appellee's motion to dismiss (Doc. #2) is granted and this appeal is dismissed.

Dated this 15th day of July, 1993 at Kansas City, Kansas.

/s/ (Earl E. O'Connor)
EARL E. O'CONNOR
United States District Judge